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SENATE BILL 6327

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State of Washington

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By Senators Shin, Swecker, Pflug, Rockefeller, McAuliffe, Doumit, Franklin, Rasmussen, Thibaudeau, Berkey, Keiser, Schoesler, Sheldon and Fairley

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1 AN ACT Relating to financing local economic development projects;  
2 amending RCW 43.163.010; adding a new section to chapter 82.29A RCW;  
3 and adding a new chapter to Title 43 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that, in many  
6 areas of the state, the lack of necessary infrastructure and vacant  
7 brownfields act as an impediment to economic growth.

8 (2) The legislature further finds that public improvements to  
9 brownfields, carried out in accordance with local economic development  
10 plans, will encourage investment in job-producing private development  
11 and will expand the public tax base.

12 (3) The legislature intends, through this act, to promote and  
13 facilitate the orderly development and economic stability of  
14 communities in the state. It is the purpose of this chapter to provide  
15 financial resources to assist local jurisdictions in the financing of  
16 public improvements which are needed to encourage private development  
17 where this development would not otherwise occur due to the presence of  
18 contaminated property and other environmental considerations.

1        NEW SECTION.    **Sec. 2.**    The definitions in this section apply  
2 throughout this chapter unless the context clearly requires otherwise.

3        (1) "Authority" means the Washington economic development finance  
4 authority created in chapter 43.163 RCW.

5        (2) "Brownfield" means abandoned, idled, or underused property,  
6 including industrial and commercial facilities, owned by a local  
7 jurisdiction, where expansion or redevelopment is complicated by real  
8 or perceived contamination.

9        (3) "Cleanup payments" means the payments made by lessees of former  
10 brownfield sites as required by section 3 of this act.

11       (4) "Leasehold excise tax" means an excise tax imposed under  
12 chapter 82.29A RCW on the act or privilege of occupying or using  
13 publicly owned real or personal property.

14       (5) "Local economic development project" means a project that:

15       (a) Promotes economic development and job creation or retention by  
16 the private sector; and

17       (b) Includes cleanup of publicly owned brownfield sites, including  
18 adjacent marine waters, rivers, and lakes, that have been designated a  
19 priority for cleanup in a local economic development plan and by the  
20 department of ecology.

21       (6) "Local economic development project costs" means costs  
22 associated with:

23       (a) Environmental cleanup, including restoring brownfields and fish  
24 habitat;

25       (b) Street and road construction and improvements;

26       (c) Water and sewer system construction and improvements;

27       (d) Land use planning and associated environmental analysis and  
28 project design;

29       (e) Relocation, maintenance, and operation of property pending  
30 construction of the local economic development project;

31       (f) Complying with the requirements of this act and other  
32 applicable law; and

33       (g) Administrative expenditures reasonably necessary and related to  
34 these costs.

35       (7) "Local jurisdiction" means a county, city, town, or port  
36 district.

1        NEW SECTION.    **Sec. 3.**    (1) Local jurisdictions with local economic  
2 development projects approved by the department of community, trade,  
3 and economic development as provided under subsection (2) of this  
4 section may enter into an agreement with the Washington economic  
5 development finance authority regarding the issuance of bonds for the  
6 purpose of financing local economic development project costs. The  
7 agreement shall require that the local jurisdiction: (a) Collect from  
8 any lessee of property associated with a local economic development  
9 project a payment in an amount at least equal to all leasehold excise  
10 taxes that would be imposed on and collected with respect to property  
11 associated with the completed local economic development project but  
12 for the exemption granted by section 13 of this act; (b) pledge the  
13 cleanup payments collected to the payment of these bonds; and (c) stop  
14 collection of cleanup payments when the bond obligations have been  
15 satisfied and notify the lessee of the obligation to pay any leasehold  
16 excise taxes which may be due subsequently.

17        (2) No local jurisdiction may enter an agreement with the  
18 Washington economic development finance authority under this act  
19 unless:

20        (a) They have delivered a local economic development project plan  
21 to the department of community, trade, and economic development that  
22 includes a description of the contemplated property and the local  
23 economic development project; the estimated cost of the total project,  
24 including both public and private components; the estimated period  
25 during which the leasehold excise tax exemption in section 13 of this  
26 act is to be operative and cleanup payments from lessees are to be  
27 devoted to meeting bond obligations; the proposed use of bond funds  
28 financing the public portion of the project; and the estimated amounts  
29 to be derived from the cleanup payments during the period in which  
30 bonds for the project are being paid off;

31        (b) The department of community, trade, and economic development  
32 has reviewed the plan and determined that the project meets the  
33 definition of local economic development project under section 2 of  
34 this act.

35        (3) Collection of cleanup payments must cease when the payments are  
36 no longer necessary or obligated to pay the costs associated with the  
37 local economic development project.

1        NEW SECTION.    **Sec. 4.** The local economic development project  
2 financing account shall be established by the authority. The proceeds  
3 of all cleanup payments collected with respect to property associated  
4 with a completed local economic development project shall be deposited  
5 into the local economic development project financing account. Only  
6 the Washington economic development finance authority may authorize  
7 expenditures from the account and no appropriation is required for  
8 expenditures. The money in the account must be used for the purposes  
9 of bond resolution or trust indenture under which the bonds are issued  
10 under this chapter and may not be used to replace or supplant existing  
11 funding. The deposit of cleanup payments required under this section  
12 shall cease when the authority specifies that all monetary obligations  
13 associated with bonds issued to pay a local economic development  
14 project's costs have been met.

15        NEW SECTION.    **Sec. 5.** In connection with any bonds issued by the  
16 authority under the terms of this act, the authority shall enter into  
17 agreements with participating local jurisdictions which shall provide  
18 for the deposit by each local jurisdiction of all cleanup payments  
19 collected on property associated with the completed local economic  
20 development project. Cleanup payments shall be disbursed bimonthly  
21 into the local economic development project account. Cleanup payments  
22 collected shall be sufficient, together with other revenues available  
23 to the authority, if any, to: (1) Pay the issuance and administrative  
24 fees set by the authority; (2) pay the local economic development  
25 project costs financed by the authority, to the extent that the payment  
26 of the costs has not otherwise been adequately provided for; (3) pay  
27 the principal of, premium, if any, and interest on outstanding bonds of  
28 the authority issued to finance the local economic development project  
29 costs as the same shall become due and payable; and (4) create and  
30 maintain reserves required or provided for in any bond resolution or  
31 trust indenture authorizing the issuance of such bonds of the  
32 authority. The authority's payments shall not be subject to  
33 supervision or regulation by any department, committee, board, body,  
34 bureau, or agency of the state other than the authority.

35        NEW SECTION.    **Sec. 6.** (1) The authority shall provide the assessor  
36 and treasurer of the county within which the local economic development

1 project is located and the department of revenue of the parcel number  
2 or numbers and street address or addresses, if any, associated with all  
3 property that is part of a local economic development project.

4 (2) The authority may, from time to time, issue its special  
5 obligation bonds in order to carry out the purposes of this chapter and  
6 to enable the authority to exercise any of the powers granted to it in  
7 this chapter. The bonds may be issued on either a taxable or federally  
8 tax-exempt basis. The bonds shall be issued pursuant to a bond  
9 resolution or trust indenture and shall be payable solely out of the  
10 local economic development project financing account created in section  
11 4 of this act. The local economic development project financing  
12 account shall be funded in whole or in part from moneys paid by one or  
13 more local jurisdictions for whose benefit such bonds were issued and  
14 from any other sources authorized by law, including from the proceeds  
15 of bonds issued by the authority for the purpose of refunding any  
16 outstanding bonds of the authority.

17 (3) The bonds may be secured by:

18 (a) A first lien against any unexpended proceeds of the bonds;

19 (b) A first lien against moneys in the local economic development  
20 project financing account created in section 4 of this act;

21 (c) A first or subordinate lien against the cleanup payment  
22 receipts of the local jurisdiction or jurisdictions that are collected  
23 on property associated with the completed local economic development  
24 project or projects;

25 (d) A first or subordinate security interest against any real or  
26 personal property, tangible or intangible, of the local jurisdiction or  
27 jurisdictions that is associated with the local economic development  
28 project;

29 (e) Any other real or personal property of the local jurisdiction  
30 or jurisdictions, tangible or intangible;

31 (f) Any combination of (a) through (e) of this subsection; or

32 (g) Any other security the authority may deem appropriate or  
33 necessary.

34 Any security interest created against the unexpended bond proceeds  
35 and against the local economic development project financing account  
36 shall be immediately valid and binding against the moneys and any  
37 securities in which the moneys may be invested without authority or  
38 trustee possession, and the security interest shall be prior to any

1 party having any competing claim against the moneys or securities,  
2 without filing or recording under Article 9A of the Uniform Commercial  
3 Code or Title 62A RCW, and regardless of whether the party has notice  
4 of the security interest.

5 (4) The bonds may be issued as serial bonds or as term bonds or any  
6 such combination. The bonds shall bear such date or dates; mature at  
7 such time or times; bear interest at such rate or rates, either fixed  
8 or variable; be payable at such time or times; be in such  
9 denominations; carry such registration privileges; be made  
10 transferable, exchangeable, and interchangeable; be payable in lawful  
11 money of the United States of America at such place or places; be  
12 subject to such terms of redemption; and be sold at public or private  
13 sale, in such manner, at such time, and at such price as the authority  
14 shall determine. The bonds shall be executed by the manual or  
15 facsimile signatures of the chairperson and the authority's duly  
16 elected secretary or its executive director, and by the trustee if the  
17 authority determines to use a trustee. At least one signature shall be  
18 manually subscribed.

19 (5) Any bond resolution, trust indenture, or agreement with a local  
20 jurisdiction relating to bonds issued by the authority or the financing  
21 or refinancing made available by this act may contain provisions, which  
22 may be made a part of the contract with the holders or owners of the  
23 bonds to be issued, pertaining to the following, among other matters:

24 (a) The security interests granted by the local jurisdiction to  
25 secure repayment of any amounts financed and the performance by the  
26 local jurisdiction of its other obligations in the financing;

27 (b) The security interests granted to the holders or owners of the  
28 bonds to secure repayment of the bonds;

29 (c) Rentals, fees, and other amounts to be charged, and the sums to  
30 be raised in each year through such charges, and the use, investment,  
31 and disposition of the sums;

32 (d) The segregation of reserves or sinking funds, and the  
33 regulation, investment, and disposition thereof;

34 (e) Limitations on the purposes to which, or the investments in  
35 which, the proceeds of the sale of any issue of bonds may be applied;

36 (f) Terms pertaining to the issuance of additional parity bonds;

37 (g) Terms pertaining to the incurrence of parity debt;

38 (h) The refunding of outstanding bonds;

1 (i) Procedures, if any, by which the terms of any contract with  
2 bondholders may be amended or abrogated;

3 (j) Acts or failures to act that constitute a default by the local  
4 jurisdiction or the authority in their respective obligations and the  
5 rights and remedies in the event of a default;

6 (k) Terms governing performance by the trustee of its obligation;  
7 or

8 (l) Such other additional covenants, agreements, and provisions as  
9 are deemed necessary, useful, or convenient by the authority for the  
10 security of the holders of the bonds.

11 (6) Bonds may be issued by the authority to refund other  
12 outstanding authority bonds, at or before the maturity thereof, and to  
13 pay any redemption premium with respect thereto. Bonds issued for such  
14 refunding purposes may be combined with bonds issued for the financing  
15 or refinancing of new local economic development project costs.  
16 Pending the application of the proceeds of the refunding bonds to the  
17 redemption of the bonds to be redeemed, the authority may enter into an  
18 agreement or agreements with a corporate trustee under section 8 of  
19 this act with respect to the interim investment of the proceeds and the  
20 application of the proceeds and the earnings on the proceeds to the  
21 payment of the principal of and interest on, and the redemption of the  
22 bonds to be redeemed.

23 (7) All bonds and any interest coupons appertaining to the bonds  
24 are negotiable instruments under Title 62A RCW.

25 (8) Neither the members of the authority, nor its employees or  
26 agents, nor any person executing the bonds is liable personally on the  
27 bonds or subject to any personal liability or accountability by reason  
28 of the issuance of the bonds.

29 (9) The authority may purchase its bonds with any of its funds  
30 available for the purchase. The authority may hold, pledge, cancel, or  
31 resell the bonds subject to and in accordance with agreements with  
32 bondholders.

33 NEW SECTION. **Sec. 7.** Bonds issued under this chapter shall not be  
34 deemed to constitute obligations, either general or special, of the  
35 state, or a pledge of the faith and credit of the state, or a general  
36 obligation of the authority. The bonds shall be special obligations of  
37 the authority and shall be payable solely from the local economic

1 development project financing account created in section 4 of this act.  
2 Except for any initial appropriations which may be made, the fund or  
3 funds shall be funded in whole or in part from moneys paid by one or  
4 more local jurisdictions for whose benefit such bonds were issued and  
5 from any other sources authorized by law, including from the proceeds  
6 of bonds issued by the authority for the purpose of refunding any  
7 outstanding bonds of the authority. The issuance of bonds under this  
8 chapter shall not obligate, directly, indirectly, or contingently, the  
9 state to levy any taxes or appropriate or expend any funds for the  
10 payment of the principal or the interest on the bonds.

11 Neither the proceeds of bonds issued under this chapter nor any  
12 money used or to be used to pay the principal of or interest on the  
13 bonds shall constitute public money or property. All of such moneys  
14 shall be kept segregated and set apart from funds of the state and any  
15 political subdivision of the state and shall not be subject to  
16 appropriation or allotment by the state or subject to the provisions of  
17 chapter 43.88 RCW.

18 NEW SECTION. **Sec. 8.** All moneys received by or on behalf of the  
19 authority under this chapter, whether as proceeds from the sale of  
20 bonds or from participants or from other sources, shall be deemed to be  
21 trust funds to be held and applied solely as provided in this chapter.  
22 The authority, in lieu of receiving and applying the moneys itself, may  
23 enter into an agreement or trust indenture with one or more banks or  
24 trust companies having the power and authority to conduct trust  
25 business in the state to:

26 (1) Perform all of any part of the obligations of the authority  
27 with respect to: (a) Bonds issued by it; (b) the receipt, investment,  
28 and application of the proceeds of the bonds and moneys paid by a local  
29 jurisdiction or available from other sources for the payment of the  
30 bonds; (c) the enforcement of the obligations of a local jurisdiction  
31 in connection with the financing or refinancing of any project; and (d)  
32 other matters relating to the exercise of the authority's powers under  
33 this chapter;

34 (2) Receive, hold, preserve, and enforce any security interest or  
35 evidence of security interest granted by a local jurisdiction for  
36 purposes of securing the payment of the bonds; and

1 (3) Act on behalf of the authority or the holders or owners of  
2 bonds of the authority for purposes of assuring or enforcing the  
3 payment of the bonds, when due.

4 NEW SECTION. **Sec. 9.** This chapter supplements and neither  
5 restricts nor limits any powers that the state or any local  
6 jurisdiction might otherwise have under any laws of this state.

7 NEW SECTION. **Sec. 10.** This chapter provides a complete,  
8 additional, and alternative method for accomplishing the purposes of  
9 this chapter and shall be regarded as supplemental and additional to  
10 powers conferred by other laws. The issuance of bonds and refunding  
11 bonds under this chapter need not comply with the requirements of any  
12 other law applicable to the issuance of bonds.

13 NEW SECTION. **Sec. 11.** This chapter, being necessary for the  
14 welfare of the state and its inhabitants, shall be liberally construed  
15 to effect its purposes. Insofar as the provisions of this chapter are  
16 inconsistent with the provisions of any general or special law, or  
17 parts thereof, the provisions of this chapter shall be controlling.

18 **Sec. 12.** RCW 43.163.010 and 1999 c 294 s 1 are each amended to  
19 read as follows:

20 As used in this chapter, the following words and terms have the  
21 following meanings, unless the context requires otherwise:

22 (1) "Authority" means the Washington economic development finance  
23 authority created under RCW 43.163.020 or any board, body, commission,  
24 department or officer succeeding to the principal functions of the  
25 authority or to whom the powers conferred upon the authority shall be  
26 given by law;

27 (2) "Bonds" means any bonds, notes, debentures, interim  
28 certificates, conditional sales or lease financing agreements, lines of  
29 credit, forward purchase agreements, investment agreements, and other  
30 banking or financial arrangements, guaranties, or other obligations  
31 issued by or entered into by the authority. Such bonds may be issued  
32 on either a tax-exempt or taxable basis;

33 (3) "Borrower" means one or more public or private persons or  
34 entities acting as lessee, purchaser, mortgagor, or borrower who has

1 obtained or is seeking to obtain financing either from the authority or  
2 from an eligible banking organization that has obtained or is seeking  
3 to obtain funds from the authority to finance a project. A borrower  
4 may include a party who transfers the right of use and occupancy to  
5 another party by lease, sublease or otherwise, or a party who is  
6 seeking or has obtained a financial guaranty from the authority;

7 (4) "Eligible banking organization" means any organization subject  
8 to regulation by the director of the department of financial  
9 institutions, any national bank, federal savings and loan association,  
10 and federal credit union located within this state;

11 (5) "Eligible export transaction" means any preexport or export  
12 activity by a person or entity located in the state of Washington  
13 involving a sale for export and product sale which, in the judgment of  
14 the authority: (a) Will create or maintain employment in the state of  
15 Washington, (b) will obtain a material percent of its value from  
16 manufactured goods or services made, processed or occurring in  
17 Washington, and (c) could not otherwise obtain financing on reasonable  
18 terms from an eligible banking organization;

19 (6) "Eligible farmer" means any person who is a resident of the  
20 state of Washington and whose specific acreage qualifying for receipts  
21 from the federal department of agriculture under its conservation  
22 reserve program is within the state of Washington;

23 (7) "Eligible person" means an individual, partnership,  
24 corporation, or joint venture carrying on business, or proposing to  
25 carry on business within the state and is seeking financial assistance  
26 under RCW 43.163.210;

27 (8) "Financial assistance" means the infusion of capital to persons  
28 for use in the development and exploitation of specific inventions and  
29 products;

30 (9) "Financing document" means an instrument executed by the  
31 authority and one or more persons or entities pertaining to the  
32 issuance of or security for bonds, or the application of the proceeds  
33 of bonds or other funds of, or payable to, the authority. A financing  
34 document may include, but need not be limited to, a lease, installment  
35 sale agreement, conditional sale agreement, mortgage, loan agreement,  
36 trust agreement or indenture, security agreement, letter or line of  
37 credit, reimbursement agreement, insurance policy, guaranty agreement,

1 or currency or interest rate swap agreement. A financing document also  
2 may be an agreement between the authority and an eligible banking  
3 organization which has agreed to make a loan to a borrower;

4 (10) "Plan" means the general plan of economic development finance  
5 objectives developed and adopted by the authority, and updated from  
6 time to time, as required under RCW 43.163.090;

7 (11) "Economic development activities" means activities related to:  
8 Manufacturing, processing, research, production, assembly, tooling,  
9 warehousing, airports, docks and wharves, mass commuting facilities,  
10 high-speed intercity rail facilities, public broadcasting, pollution  
11 control, brownfield cleanup and development, solid waste disposal,  
12 federally qualified hazardous waste facilities, energy generating,  
13 conservation, or transmission facilities, and sports facilities and  
14 industrial parks and activities conducted within a federally designated  
15 enterprise or empowerment zone or geographic area of similar nature;

16 (12) "Project costs" means costs of:

17 (a) Acquisition, lease, construction, reconstruction, remodeling,  
18 refurbishing, rehabilitation, extension, and enlargement of land,  
19 rights to land, buildings, structures, docks, wharves, fixtures,  
20 machinery, equipment, excavations, paving, landscaping, utilities,  
21 approaches, roadways and parking, handling and storage areas, and  
22 similar ancillary facilities, and any other real or personal property  
23 included in an economic development activity;

24 (b) Architectural, engineering, consulting, accounting, and legal  
25 costs related directly to the development, financing, acquisition,  
26 lease, construction, reconstruction, remodeling, refurbishing,  
27 rehabilitation, extension, and enlargement of an activity included  
28 under subsection (11) of this section, including costs of studies  
29 assessing the feasibility of an economic development activity;

30 (c) Finance costs, including the costs of credit enhancement and  
31 discounts, if any, the costs of issuing revenue bonds, and costs  
32 incurred in carrying out any financing document;

33 (d) Start-up costs, working capital, capitalized research and  
34 development costs, capitalized interest during construction and during  
35 the eighteen months after estimated completion of construction, and  
36 capitalized debt service or repair and replacement or other appropriate  
37 reserves;

1 (e) The refunding of any outstanding obligations incurred for any  
2 of the costs outlined in this subsection; and

3 (f) Other costs incidental to any of the costs listed in this  
4 section;

5 (13) "Product" means a product, device, technique, or process that  
6 is or may be exploitable commercially. "Product" does not refer to  
7 pure research, but shall be construed to apply to products, devices,  
8 techniques, or processes that have advanced beyond the theoretic stage  
9 and are readily capable of being, or have been, reduced to practice;

10 (14) "Financing agreements" means, and includes without limitation,  
11 a contractual arrangement with an eligible person whereby the authority  
12 obtains rights from or in an invention or product or proceeds from an  
13 invention or product in exchange for the granting of financial and  
14 other assistance to the person.

15 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.29A  
16 RCW to read as follows:

17 All leasehold interests in completed local economic development  
18 projects financed under this act are exempt from tax under this chapter  
19 for the period of time lessees are making cleanup payments as required  
20 by this act.

21 NEW SECTION. **Sec. 14.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 15.** Sections 1 through 11 of this act  
26 constitute a new chapter in Title 43 RCW.

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